

## CHAPTER 9

### Separations

#### 9.1 Separations

All separations of employees from positions in the competitive service shall be designated as one of the following types:

- 1 Resignation (also to be used for retirement);
- 2 Lay-off;
- 3 Dismissal;
- 4 Unsatisfactory service (also to be used for probationary separations);
- 5 Disability;
- 6 Death.

#### 9.2 Resignation

- 1 It is the responsibility of an employee who plans to resign from the competitive service to notify his/her immediate supervisor at least ten business days prior to the last day of work.
- 2 An employee who resigns without sufficient prior notice and thereby, in the opinion of the department head, impairs the effectiveness of the County service shall have his/her separation designated as unsatisfactory service or dismissal according to the rules governing such separations. In addition, for each day less than the required notice given, one day of annual leave may be deducted from the employee's record.
- 3 Employees who resign shall receive payment for all compensatory time and annual leave credit for which they are eligible according to the rules governing such leave, except as provided above.
- 4 An employee who resigns by reason of retirement may be reemployed in any position for which qualified with the following exception. No person may be reemployed by the same department head under whom the employee was serving upon retirement; provided, however, that whenever the County Executive determines in writing that it is in the best interest of the service, he/she may authorize reemployment of retirees by the same department head in exempt limited term positions; and further provided, however, that any retiree who agrees pursuant to the provisions of the retirement ordinances to waive his/her retirement allowance during the period of his/her reemployment, or if

such reemployment would qualify him/her for membership in a retirement system other than from which he/she retired, he/she may be appointed to any position for which he/she is qualified without regard to his/her former department head.

- 5 A merit employee who resigns in order to join the military forces of the United States or who is inducted into such service is entitled, upon discharge, to be restored to his/her former position or to a position of like seniority, status and pay in accordance with guidelines set forth in federal law.

### 9.3 Reinstatement

An employee eligible for reinstatement as defined in Chapter 2 may be reinstated in accordance with Chapter 4 to the position or class formerly held; provided, that no other employee with merit status in the class to which such person is being returned shall be demoted or laid off in order to make such a reinstatement possible.

### 9.4 Lay-Offs

#### -1 Definitions

- a. Active Class: The class to which the employee is assigned when he/she becomes subject to the Reduction-in-Force Procedure. For the purpose of this procedure the active class for employees serving in an acting promotional capacity shall be the employee's class prior to being temporarily promoted. The active class for employees who are serving under a non-competitive underfill agreement shall be the class at which the position is authorized to be filled (i.e., the higher class). The active class for employees who are serving under a competitive underfill agreement shall be the class in which the employee is currently serving (i.e., the lower class).
- b. Continuous Service: Employment including merit service with the Fairfax County Public School System, without interruption except for absences on approved leaves, absences to serve in the Armed Forces of the United States or absences of less than one calendar year when followed by reemployment or reinstatement. Service prior to normal or early retirement from a County retirement system shall not be counted.
- c. Department: For the purpose of this section, shall include all offices, divisions, and other work units, which are under the control of a single department head.
- d. Minimum Qualifications: Qualifications as stated in the official class specification as approved by the County Executive.
- e. Month: For the purposes of this section, month shall be defined as 30.4166 days (365 days ÷ 12 months.)
- f. Probationary Employee: For the purpose of this section, probationary employee shall be defined as an employee serving the initial probationary period with the

County.

- g. Secondary Class: A class in which an employee is not actively employed when he/she becomes subject to this procedure which is equal to or lower in grade than the active class and in which the employee has previously been assigned for a period of one year or more during his/her continuous service period with the County.

Secondary class includes lower classes within the active class series. Secondary class also includes lower classes within the class series where the employee was previously assigned for a period of one year or more. Secondary class shall not include any class from which the employee was removed for disciplinary or inadequate performance reasons.

- h. Seniority: The sum of the employee's continuous service points. An employee shall receive one point for each month of merit employment during the employee's period of continuous service. Credit will be given for partial months. Credit for employment time shall be deducted on a year-for-year basis (12 points) for each pay increase denied or annual performance review with a rating of unsatisfactory (deficient or unacceptable rating for public safety employees or non public safety employees ratings prior to July 1, 2000) received within the 3 years prior to the date the County Executive invokes the RIF.

## -2 Reduction-In-Force

The County Executive may invoke a reduction-in-force procedure (RIF) when he/she determines that there is an excess number of employees under his/her supervision and control, as a result of, for example, the abolishment of a position(s), the lack of funds, or the lack of work. Additionally, when the Human Resources Director approves the abolition of a position held by a non-probationary merit employee in the competitive service, the procedures in this section are applicable. The reduction-in-force procedure shall not be utilized as long as there are probationary employees in the department and in the active class in which the reduction-in-force is to be implemented. All positions held by exempt limited term, exempt part time as well as other positions held by probationary employees in the affected department shall be examined by the department head to determine if separation of such employees will provide placement opportunities for non-probationary employees in their department affected by the reduction-in-force.

## -3 Reduction-In-Force Procedures

- a. The department head or deputy shall recommend the class(es) within a department in which there are an excess number of employees. Final approval of the affected classes and numbers to be reduced rests with the County Executive or his/her designee.

- b. When advised by the County Executive that a reduction-in-force is under consideration, the Human Resources Director is authorized to suspend the filling of any vacant position within the classes of work to be affected by the scheduled reduction-in-force action, as well as all lower graded classes within all class series of which said affected classes are a part and any other class in which placement of a displaced employee may be likely. Notwithstanding any other provisions in this procedure, the County Executive may suspend indefinitely the filling of vacant positions when it is deemed to be in the best interest of the County to do so.
- c. Employees in classes designated as excess shall be subject to the following procedures provided that if there is more than one position available, the Human Resources Director shall designate the position to which the employee shall be assigned:
  - (1) The Human Resources Director shall rank the employees in the departments with excess positions according to seniority, as defined in 9.4-1h, and establish a seniority list for each affected class in each affected department. The least senior employees in an affected class in an affected department shall be subject to the steps listed below, regardless of whether their specific position is to be abolished. Once it is determined which employees are subject to the reduction-in-force procedure based upon their seniority and the number of excess positions, the Human Resources Director shall rank all of them, regardless of department, according to seniority, as defined in 9.4-1h. All employees to be placed shall be processed through each step listed below, starting with those with the most seniority, before progressing on to the next step in the procedure.
  - (2) An employee in a class designated as excess shall be transferred to a vacancy in his/her class in any department. If there are more employees to be placed than vacancies, placement priority shall be determined by seniority. Transfer to such a vacancy shall be mandatory and if refused the employee shall be terminated.
  - (3) An employee in a class designated as excess shall be transferred to a vacancy for which he/she meets the minimum qualifications in another class at the same pay grade in any department. If there are more employees to be placed than vacancies, placement priority shall be determined by seniority. Transfer to such a vacancy is voluntary.
  - (4) If there is no vacancy as specified in 2 above and the employee is not transferred as indicated in 3, an employee in a class designated as excess shall displace a probationary employee in his/her class in another department. Transfer to such a position is mandatory and if refused, the employee shall be terminated. If more than one probationary employee is serving in the class, the employee with the least seniority shall be displaced first. Probationary employees so displaced shall be terminated.

- (5) If there are no opportunities as identified in 2 and 4 above, and the employee is not transferred as indicated in 3, the employee shall have an opportunity to transfer to vacancies in his/her or another department in secondary and other classes which are at a lower grade than his/her active class. Transfer to such vacancy shall be voluntary. The employee must meet the minimum qualifications for the vacancy to which he/she desires to transfer. If there are more employees to be placed than vacancies, placement priority shall be determined by seniority.
- (6) If there are no opportunities as specified in 2 and 4 above, and the employee does not utilize or is not eligible to utilize the procedures set forth in 3 and 5, an employee in a position designated as excess shall displace a probationary employee in a position in a secondary class in his/her department or another department. The employee must accept the first available displacement opportunity. Displacement opportunities will be available beginning with the secondary class with the highest pay grade and continuing in descending pay grade order. Transfer to such positions shall be voluntary. If more than one probationary employee is serving in the secondary class, the employee with the least seniority shall be displaced first. Probationary employees so displaced shall be terminated.
- (7) If placement pursuant to 2 and 4 is not available and the employee does not utilize or is not eligible to utilize the procedures set forth in 3, 5, and 6, then the employee is eligible to bump within secondary classes within his/her department, according to the following procedures:
- (a) An employee may not bump in a secondary class wherein the employee has elected not to accept placement under Sections 5 and 6 above.
  - (b) An employee with more seniority shall be eligible to bump within his/her department in secondary classes as defined in 9.4-1g in which there is presently assigned a person with less seniority. The employee must accept the first available bumping opportunity. Bumping opportunities will be available beginning with the secondary class with the highest pay grade and continuing in descending pay grade order. If more than one bumping opportunity at the same pay grade level is available; the employee displaced shall be the one with the least seniority. Failure to accept a bumping opportunity as defined herein results in lay off of the employee in the position designated as excess.
  - (c) An employee who is bumped pursuant to this procedure will be eligible to utilize the procedure set forth in this policy.

#### -4 Transition Period Following Placement

If an employee, displaced by a reduction-in-force and subsequently placed in a new position in accordance with the procedures outlined above, is separated for

unsatisfactory performance during the first year following placement in the new position, he/she shall be laid off and entitled to the reemployment, notice and severance pay benefits outlined in this procedure.

#### -5 Reemployment

An employee who is demoted, who does not successfully complete the one year transition period following a RIF placement due to unsatisfactory performance, or is unable to utilize a transfer or bumping opportunity under these procedures and is laid off shall have his/her name placed on the reemployment list for his/her active classification. All employees on the reemployment list for a specific job class shall be certified for vacancies in that class. The certification list shall include the seniority rating for each employee; however, selection for a specific vacancy shall be at the sole discretion of the department head or deputy. All employees on the reemployment list for a specific job class must be offered reemployment prior to the certification or selection of applicants not on the reemployment list. Employees who return to a position in their active class under this procedure shall be treated as reinstatements with respect to pay and leave accrual. If an employee is offered and rejects an opportunity for reemployment in the active class, his/her name shall be removed from all reemployment lists. The employee's salary shall not be affected.

In addition, at the employee's option, his/her name may be placed on the reemployment lists for secondary classifications as defined in this procedure. Should a vacancy occur in such a secondary class, employees on the reemployment list shall be certified for the vacant position but are not guaranteed placement. Selection for such positions shall be at the discretion of the department head or deputy. If an employee is offered and rejects an opportunity for reemployment in a secondary classification, his/her name shall be removed from only the referenced list. Employees shall remain on reemployment lists created under this procedure for two years or until the employee accepts placement in the active class. In no case, however, shall an employee be eligible for non-competitive appointment to a position higher in pay grade than the position in which the employee was serving at the time of layoff or demotion.

Exempt-limited term and exempt part-time positions that become available in a class in which there are persons with reemployment rights will be offered to persons with reemployment rights in that classification on the basis of seniority. If an employee accepts an exempt-limited term or exempt part-time position, he/she will remain eligible for reemployment as described above.

#### -6 Pay Retention Provisions

An employee who accepts a demotion under this procedure shall continue to receive the salary he/she had been receiving prior to the demotion until the employee accepts another position in the former pay grade or in a pay grade in a higher range of pay than the former pay grade. The employee shall not be entitled to an increase in salary until his/her salary falls below the maximum rate of pay for the new pay grade. The performance pay increase date shall not be affected by the demotion. If the employee is

returned to his/her active class, the rate of pay shall not change upon return to the active class.

**-7 Notice and Severance Pay**

- a. Prior to lay-off, a merit employee shall be given at least 30 calendar days notice. The employee's notice of lay-off shall be accomplished by hand delivery or by mailing by certified mail to the employee's listed address, a written communication notifying him/her of the lay-off.
- b. Severance pay to be paid at the rate of pay at time of lay off will be granted to non-probationary merit employees laid off in accordance with this procedure according to the following formula:

YEARS OF SERVICE	WEEKS SEVERANCE PAY
2 to 5	3 weeks pay
6 to 10	4 weeks pay
11 to 15	5 weeks pay
16 or more	6 weeks pay

Unless otherwise specified by the Board of Supervisors, severance pay shall be forfeited by the employee who declines a transfer, reassignment or demotion to another vacant position or who declines a bumping opportunity prior to the effective date of any such separation due to a reduction-in-force.

Upon the effective date of the separation, an employee shall be entitled to receive the employee's total severance pay allowance at bi-weekly intervals until the total severance pay to which the employee is entitled has been exhausted. Employees will not accrue leave or other benefits related to severance pay.

Severance payments to an employee shall cease, if not exhausted, upon the reemployment of the employee to a position in the competitive service.

**-8 Workforce Composition Review**

Due to the transfers, demotions and bumping that occur as a RIF is implemented, it is not possible to ascertain the impact on the workforce composition until the RIF has been completed. At that time, the County Executive shall examine the results of the reduction in force to determine if the County's workforce composition has been significantly altered and if so, shall recommend appropriate future changes to the Affirmative Action Plan.

**-9 Miscellaneous**

- a. When advised by the County Executive of a reduction-in-force, the Human Resources Director or his/her designee shall prepare a reduction-in-force roster ranking each employee within the affected class(es). This roster shall be open for employee inspection.
- b. Ties in seniority shall be resolved by ranking tied employees on the basis of the last 4 digits of their social security number. The employee ranked first numerically would be considered for lay-off first. Further ties shall be determined by lot.
- c. Lateral transfers under this procedure shall not be mandatory if the number of scheduled hours of the vacant position or the position occupied by a probationary employee to be displaced differ from the number of scheduled hours of the employee's current position.
- d. Notwithstanding any other provision, the Human Resources Director is authorized to review records related to the reduction-in-force procedure and investigate allegations of unfair application of these procedures.

#### 9.5 Unsatisfactory Service Separations

- 1 An department head may separate an employee with an unsatisfactory service separation whenever the work habits, attitudes, production or personal conduct of an employee falls below the desirable standards for continued employment. A resignation initiated by an employee may be designated as unsatisfactory service by the ~~authority~~ department head if adequate grounds exist.
- 2 Reasons for unsatisfactory service separations shall include:
  - a. Insufficient advance notice prior to resignation.
  - b. Unsatisfactory performance in the duties of the position.
  - c. Undesirable behavior or other similar reasons not of a degree requiring dismissal.
- 3 Employees who have completed their initial probationary periods and who are separated for unsatisfactory service are entitled to an advance notice of ten business days in accordance with the criteria set forth in Section 16.6.
- 4 Employees separated for unsatisfactory service shall be paid for all compensatory time and annual leave credits for which they are eligible according to the rules governing such leave, except as provided in the section on resignation without sufficient notice.
- 5 If an employee separated for unsatisfactory service applies to the Department of Human Resources for reemployment, the facts surrounding his previous separation shall be reviewed with his/her former department head or other informed supervisor. The



employee may be certified for any class for which he/she is qualified, including his/her former class only when it appears highly probable that the reason for his/her unsatisfactory service separation will not recur. The prospective department head or deputy shall be notified prior to the time of interview with the employee of the facts surrounding the prior unsatisfactory service separation as stated on the separating personnel action form.

#### 9.6 Restrictions on Activities of Former Employees

- 1 Restrictions; Authority therefore. For one year after their terms of office have ended or their employment ceased, former officers and employees of Fairfax County are prohibited from assisting for remuneration a party, other than a governmental agency, in connection with any proceeding, application, case, contract, or other particular matter involving the County or an agency thereof, if that matter is one in which the former officer or employee participated personally and substantially as a County officer or employee through decision, approval, or recommendation; provided, however, the provisions of this section shall not limit or restrict those former County employees who are displaced, laid off or whose employment with the County is terminated as a result of the award of a privatization contract from accepting employment with the contractor who is awarded such contract unless such an employee was involved personally and substantially in the selection of the contractor through decision, approval, or recommendation while employed by the County. The authority for these restrictions is contained in VA. Code, Section 15.2-810.
- 2 Applicability. The term "officer or employee," as used in this section, includes members of the Board of Supervisors, County officers and employees, and individuals who receive monetary compensation for service on or employment by agencies, boards, authorities, sanitary districts, commissions, committees, and task forces appointed by the County Board of Supervisors.
- 3 Definitions. For purposes of the Article, the following phrases shall have the following meanings:
  - a. "Assisting for remuneration" shall mean doing anything that reasonably could be expected to help or aid a party, not a governmental agency, to obtain anything of benefit in any proceeding, application, case, contract or other matter involving the County, or any of its agencies, where the former officer or employee receives anything of value in consideration of, as compensation for, or as a result of his/her providing that help or aid. The term "assisting" shall include, but is not limited to, providing information that a former officer or employee obtained by reasons of his/her employment with the County and that is either protected by the attorney client privilege, is confidential as a matter of law, or is exempt from disclosure under the Virginia Freedom of Information Act, VA. Code Section 2.1-340, et. seq.
  - b. "Participated personally and substantially" means direct participation, including the participation of a subordinate when actually directed in the matter by the former

officer or employee, and means that the former officer or employee's involvement must be of significance to the matter, or form a basis for a reasonable appearance of such significance. "Substantially" requires more than official responsibility (although official responsibility may be a factor in determining the substantiality of the involvement), knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue, and is based not only on the effort devoted to a matter, but on the importance of the effort. As used in this definition, "official responsibility" means direct administrative or operating authority, whether intermediate or final, exercisable either along or with others and either personally or through subordinates, to approve, disapprove, or otherwise direct County actions.

- c. Privatization contract shall mean a contract between the County and a person, firm, corporation or other legal entity to provide services previously performed by County employees which results in the laying off of merit employees or the termination of exempt employees who had been providing those services.
- 4 Defense. It shall be an affirmative defense to a criminal charge under this Section that, prior to providing assistance for remuneration to a party other than a governmental agency in connection with a matter that he/she personally and substantially participated in as a County officer or employee, the former officer or employee requested and received from the County Executive a determination that the proposed assistance for remuneration did not fall within the prohibitions of this section. Such determination is a defense only to the extent that the former officer or employee fully and completely disclosed all material facts and circumstances in his/her request for determination. Requests for such a determination shall be in writing. The County Executive shall render his determination in writing no sooner than ten (10) days after receipt of the request and after obtaining the opinion of the County Attorney. Such determinations shall be kept on file in the Office of the Clerk to the Board of Supervisors and be indexed under the name of the former officer or employee.